

## **REMARKS**

Applicant respectfully requests reconsideration and allowance of all of the claims of the application. The status of the claims is as follows:

- Claims 1-8 are currently pending.

### **Allowed Claims**

The Office Action indicates that claim 7 is allowable. The Applicant would like to thank the Examiner for allowing claim 7. This claim has not been amended herein, and therefore remains in condition for allowance.

### **Cited Documents**

The following documents have been applied to reject one or more claims of the Application:

- **Legall:** Legall, U.S. Patent No. 6,005,565
- **Rauch:** Rauch, U.S. Patent No. 5,731,844
- **Yohanan:** Yohanan, U.S. Patent No. 7,032,185
- **Maze:** Maze, U.S. Patent No. 6,216,264
- **Coden:** Coden, U.S. Patent No. 5,873,080
- **Bedard:** Bedard, U.S. Patent No. 5,801,747
- **Beery:** Beery, U.S. Patent No. 6,215,531

**Claims 1 and 4-6 Are Non-Obvious Over Legall in view of Rauch, Yohanan,**

**Maze and Coden**

Claims 1 and 4-6 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Legall in view of Rauch, Yohanan, Maze and Coden. The Applicant respectfully traverses the rejection.

**Independent Claim 1**

The Applicant respectfully submits that the Rauch reference is disqualified as prior art under 35 U.S.C. 103(c) for use in a Section 103 rejection of the instant application.

**The Rauch Reference is Not Prior Art with Respect to the Instant Application**

The instant application (10/686,984) is a continuation of, and claims priority to, the U.S. patent application 08/828,709 application, filed 31 March 1997. Accordingly, the instant application has an effective filing date of 31 March 1997.

The Rauch reference did not publish until it issued, on 24 March 1998. This is after the 31 March 1997 effective filing date of the instant application.

The Rauch reference claims priority to U.S. application 08/241,743, filed 12 May 1994, now abandoned. The 08/241,743 application did not publish.

Therefore, Rauch, and any application to which Rauch claims priority, did not publish until after the filing of the instant patent application. Accordingly, Rauch is Section 102(e) art.

Moreover, the Rauch patent, its parent application, the instant application and its parent application were all under a duty of assignment to Microsoft Corporation at the time of the respective inventions.

Therefore, the Applicant respectfully submits that Section 103(c) removes the Rauch reference from consideration as prior art. Accordingly, the Applicant respectfully requests that the Section 103(a) rejection be removed, and that claim 1 be allowed to issue.

#### Dependent Claims 4-6

Claims 4-6 ultimately depend from independent claim 1. As discussed above, claim 1 is allowable over the cited documents. Therefore, claims 4-6 are also allowable over the cited documents of record for at least their dependency from an allowable base claim, and also for the additional features that each recites.

#### **Claims 2-3 Are Non-Obvious Over Legall, Rauch, Yohanan, Maze and Coden, further in view of Bedard**

Claims 2-3 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Legall, Rauch, Yohanan, Maze and Coden, further in view of Bedard. The Applicant respectfully traverses the rejection.

#### Dependent Claims 2-3

Claims 2-3 ultimately depend from independent claim 1. As discussed above, claim 1 is allowable over the combination of Legall, Rauch, Yohanan, Maze and Coden. Bedard is cited for its alleged teaching of ordering television shows based on a viewed time of each show. The Office suggests that such ordering places higher percentages

of viewing on some channels, and lower percentages on other channels. Without commenting on the Office's suggestion, the Applicant respectfully submits that Bedard fails to remedy the deficiencies of the rejection of claim 1 in view of the removal of the Rauch document. That is, Bedard fails to teach or suggest the aspects of Rauch relied upon by the Office in the rejection of claim 1, and claim 1 is allowable over Bedard. Therefore, claims 2-3 are allowable over the cited documents of record for at least their dependency from an allowable base claim, and also for the additional features that each recites.

**Claim 8 Is Non-Obvious Over Legall, Rauch, Yohanan, Maze and Coden, further in view of Beery**

Claim 8 stands rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Legall, Rauch, Yohanan, Maze and Coden, further in view of Beery. The Applicant respectfully traverses the rejection.

**Independent Claim 8**

**The Rauch Reference is Not Prior Art with Respect to the Instant Application**

The Applicant respectfully submits that the Rauch reference is disqualified as prior art under 35 U.S.C. 103(c), and incorporates the remarks from above, at this location. Accordingly, the Applicant respectfully requests that the Section 103(a) rejection be removed, and that claim 1 be allowed to issue.

## **Conclusion**

For at least the foregoing reasons, all pending claims are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the application. If any issues remain that would prevent allowance of this application, the **Applicant requests that the Examiner contact the undersigned representative before issuing a subsequent Action.**

Respectfully Submitted,

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Representative for Applicant

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